

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

STEVEN BRUCE HOYT,

Debtor.

Case No. 11-43816

Chapter 11

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**NOTICE OF HEARING AND MOTION FOR AUTHORITY  
TO SELL PROPERTY**

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TO: Entities Specified in Local Rule 9013-3.

1. Steven Bruce Hoyt (the “Debtor”), by and through its undersigned counsel, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **10:30 a.m. on July 13, 2011**, before the Honorable Gregory F. Kishel, Courtroom 2A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and served by July 8, 2011, which is five (5) days prior to the hearing (including Saturdays, Sundays, and holidays). **Unless a response opposing the motion is timely filed, the Court may grant the motion without a hearing.**

4. This Court has jurisdiction over this motion under 28. U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on May 31, 2011 (the “Petition Date”). This case is now pending before this Court.

5. This motion arises under 11 U.S.C. § 363 and Bankruptcy Rule 6004. This motion is filed under Bankruptcy Rules 9013 and 2002 and Local Rule 9013. The Debtor seeks an order authorizing the sale of real property and related interests.

6. Among the Debtor's assets are 100% of the membership interests in Horn CA, LLC ("Horn"), which are not subject to any lien or security interest. Horn's only asset is a single parcel of real property located in West Hollywood, California (the "Real Property"). The Real Property comprises approximately ½ acre of land, and is approved for construction of five (5) market rate and (2) subsidized condominiums.

7. The Real Property is subject to a first mortgage which is presently held by Southern Financial Group, LLC ("Southern") as the assignee of Associated Bank. The obligation secured by the mortgage totals approximately \$1,811,000. The Debtor has guaranteed payment of that obligation.

8. Prior to the petition date, the obligation to Southern totaled approximately \$2,711,000. In addition to the mortgage on the Real Property, Southern held a perfected security interest in 75,000 Operating Partnership Units of First Industrial, L. P., having a value of approximately \$900,000. The Debtor reached agreement with Southern that he would facilitate liquidation of Southern's collateral in exchange for a release of any remaining claims under the guarantee. Under the terms of that agreement, all 75,000 Operating Partnership Units were converted to common stock and sold before the petition date for approximately \$900,000 with the proceeds applied to the debt owed to Southern, thereby reducing the balance of the obligation to approximately \$1,811,000.

9. The Debtor and Southern wish to complete the agreement. The Debtor has found a buyer for the Real Property for a price of \$600,000, which he believes is the highest and best price

available in the market. To complete that sale, the Debtor and Southern have agreed that the Debtor will transfer to Southern his membership interests in Horn, subject to approval of this Court. Southern will then be able to complete the sale of the Real Property to the buyer.

10. In exchange for the transfer of the Horn interests and the agreement of the Debtor to help Southern find another buyer for the Real Property if the present buyer does not close the purchase, Southern will release the Debtor from any further liability under his guarantee.

11. This transaction is in the interests of the Debtor and his estate. The value of the only asset owned by Horn is less than the obligation to Southern secured by that asset by at least \$1,200,000. The transaction will relieve the Debtor of any obligation for that deficiency.

12. The proposed sale of the Horn interests is outside the Debtor's ordinary course of business. The Debtor seeks an order authorizing the sale pursuant to §363(b) of the Bankruptcy Code.

13. The Debtor may offer additional evidence at the hearing this motion, including the testimony of the Debtor, if such is necessary.

**WHEREFORE**, the Debtor respectfully requests an order approving the sale of his interests in Horn CA, LLC outside the ordinary course of business and granting such further relief as the Court deems just and proper.

Dated: June 8, 2011

RAVICH MEYER KIRKMAN  
McGRATH, NAUMAN & TANSEY  
A PROFESSIONAL ASSOCIATION

By /e/ Michael L. Meyer #72527

4545 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(612) 332-8511 - T  
ATTORNEYS FOR DEBTOR

**VERIFICATION**

I, Steven Bruce Hoyt, declare under penalty of perjury that the facts set forth in the foregoing Notice of Hearing and Motion for Authority to Sell Property, are true and correct according to the best of my knowledge, information and belief.

Executed on: June 8, 2011

  
\_\_\_\_\_  
Steven Bruce Hoyt

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**MEMORANDUM OF LAW**

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This memorandum of law is submitted in support of the Debtor's Motion for Authority to Sell Property. A hearing has been scheduled **July 13, 2011** to consider the Motion.

**FACTS**

The factual basis for this memorandum are set forth in the verified Motion and incorporated herein. All capitalized terms not defined herein have the meaning ascribed in the Motion.

11 U.S.C. § 363(b) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The Debtor contends that the proposed sale of the Property is in the best interest of the estate. The sale will result in the reduction of claims against the Debtor by approximately \$1,200,000.

The Court must consider the proposed sale to determine whether there is sound business justification for a sale outside the ordinary course. *See, e.g., In re Channel One Communications*, 117 B.R. 493 (Bank. E.D. Mo. 1990) (adopting the sound business purpose test of *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983)); *In re George Walsh Chevrolet, Inc.*, 118 B.R. 99 (Bankr. E.D. Mo. 1990); *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-336 (Bankr. D. Del. 1987).

The Debtor respectfully requests that an order be entered granting the relief sought in the Motion.

Dated: June 8, 2011

RAVICH MEYER KIRKMAN  
McGRATH & NAUMAN,  
A PROFESSIONAL ASSOCIATION

By /e/ Michael L. Meyer #72527

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**UNITED STATES BANKRUPTCY COURT  
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**UNSWORN CERTIFICATE OF SERVICE**

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I, Michael L. Meyer, declare under penalty of perjury that on June 8, 2011, copies of Debtor's:

1. Notice of Hearing and Motion for Authority to Sell Property;
2. Memorandum of Law; and
3. Proposed Order;

were served by sending to each party a copy thereof as noted on the attached Service List.

Dated: June 8, 2011

By: /e/ Michael L. Meyer (72527)

Ravich Meyer Kirkman McGrath  
Nauman & Tansey, P.A.  
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80 South Eighth Street  
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MINN DEPT OF REVENUE  
COLLECTION ENFORCEMENT  
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PNC BANK NA  
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CROWN BANK  
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OR OTHER PERSON AUTHORIZED TO ACCEPT SERVICE  
6600 FRANCE AVENUE SOUTH STE 125  
EDINA MN 55435

EQUITY BANK  
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OR OTHER PERSON AUTHORIZED TO ACCEPT SERVICE  
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MERCHANTS BANK  
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**UNITED STATES BANKRUPTCY COURT  
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**ORDER**

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This matter came on for hearing on the Debtor's Motion for Authority to Sell Property ("Motion"). Michael L. Meyer appeared for the Debtor, and other appearances were noted in the record. Based on the pleadings, testimony and arguments of counsel,

**IT IS HEREBY ORDERED:**

1. The Debtor is authorized to sell his member interests in Horn CA, LLC, together with all related rights ("Property") to Southern Financial Group, LLC on the terms described in the Motion.

2. If the pending sale of the Real Property owned by Horn CA, LLC described in the Motion does not close, the Debtor shall make his best efforts to aid Southern Financial Group, LLC to find another buyer for the Real Property within a reasonable period of time given market conditions.

3. Notwithstanding F.R.Bankr.P. 6004(h), this Order is effective immediately.

Dated:

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GREGORY F. KISHEL  
CHIEF UNITED STATES BANKRUPTCY JUDGE